IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12669 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JETHABHAI AMRABHAI VANKAR

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 12669 of 2000

MR BIPIN I MEHTA for Petitioner No. 1

MR UM SHASTRI for Respondents

SERVED BY RPAD - (N) for Respondents No. 2-4

NOTICE SERVED for Respondents No. 2,5-6-4

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 22/02/2002

ORAL JUDGEMENT

#. Rule. Mr.Shastri, waives service of rule for the

respondents. With the consent of the parties, the matter is taken up for final hearing today.

#. The petitioner, initially, was appointed as Rakshak in the Western Railway on 1.4.1970. In the year 1980, he was subjected to chargesheet on the ground that he was found sleeping on 5.11.1979 while he was on duty and that he had misbehaved with Head Rakshak. As per the averments made in the petition, one another employee Mr.Pravinchandra Jani was also subjected to the same chargesheet. Initially, there was a joint inquiry against the petitioner and the said Mr.Jani and subsequently, both the inquiries were separated. It is stated by the petitioner that, on the relevant date, i.e., on 15.11.1979 he was not feeling well and, therefore, with the approval of his superior, he was lying on the bench and was sleeping as he was required to take rest. The Inquiry Officer exonerated the petitioner. However, the disciplinary authority imposed the punishment of removal on 18.12.1980. The said order was challenged by the petitioner by filing the appeal. The appellate authority dismissed the same on 28.1.1993. The petitioner, thereafter, challenged the said order by filing Special Civil Application No.3171 of 1993. This Court (Coram: S.K.Keshote,J) by order dated 30.1.1997 came to the conclusion that the petitioner as well as another Rakshak Mr.Jani were chargesheeted for the similar charges and both of them were exonerated by the Inquiry Officer, but the disciplinary authority disagreed with the said finding and the petitioner was subjected to the penalty of removal, while another delinquent Mr.Jani was subjected to the penalty of withholding of one grade increment for two years. This court, thereafter, after setting aside the order of the appellate authority, remanded the matter to the appellate authority to decide the appeal of the petitioner afresh and as per the observations made in the judgment which were in connection with the quantum of punishment. After the order of this court, by order dated 21.7.1997, the appellate authority reduced the punishment of removal to that of reduction in pay to the minimum of pay scale for a period of six months with cumulative effect. However, intervening period was treated as leave due. The petitioner, thereafter, made some other application which was also rejected and accordingly the said decision of the appellate authority is challenged by filing this petition.

#. At the time of hearing of this petition, it was argued by Mr.Mehta that, since the petitioner was not having any leave to his credit, he will not be given any

backwages for the intervening period at all. Therefore, looking to the facts and circumstances of the case, this is a case in which full backwages should have been given in his favour. On the other-hand, it was argued by Mr.Shastri that the petitioner cannot be given full backwages for the intervening period and he supported the order of the appellate authority.

#. However, considering the facts and circumstances of the case, in my view, withholding of total backwages for the intervening period is on the higher side especially when in a similar type of case, the department has given full backwages to another delinquent Mr.Jani. I, therefore, suggested that in the facts and circumstances of the case, the petitioner can be given 50% backwages which is acceptable to Mr.Mehta. The said suggestion is not seriously opposed by Mr.Shastri. In the facts and circumstances of the case, the order of the appellate authority is modified and it is directed that the petitioner should be paid 50% of the backwages for the intervening period, i.e., from the date of his removal till he was actually taken back in service. For the aforesaid period, the respondents may pay 50% backwages to the petitioner. Rest of the order of the appellate authority is confirmed. It is also clarified that the petitioner will be entitled to continuation of his service and his seniority should be protected accordingly. The aforesaid benefit of 50% backwages may be given on or before 30.6.2002. The petition is accordingly partly allowed. Rule is made absolute accordingly with no order as to costs.

(P.B.Majmudar,J)
(pathan)